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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,072	08/06/2001	Victor H. Shear	7451.0003-02	3373

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EXAMINER
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CALLAHAN, PAUL E

ART UNIT	PAPER NUMBER
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2137

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/925,072

Applicant(s)

SHEAR ET AL

Examiner

Paul Callahan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 44-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 44-49, 51 and 54-63 is/are rejected.
- 7) ☒ Claim(s) 50, 52, 53 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____  | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Claims 44-49 were pending in this application at the time of the previous Office Action. New claims 50-63 have been added via the latest amendment. Therefore claims 44-63 are pending in this application and have been examined.

### ***Response to Arguments***

2. Applicant's arguments filed 2-1-06 have been fully considered but they are not persuasive.

The Applicant argues that McManis fails to teach the feature of generation of a specification at a certification authority, that describes the actual operation of an executable program based on a test result of the program. Yet a review of the reference shows that such is indeed taught at the passages cited in the previous Office Action (col. 5 lines 55-67, col. 2 lines 30-65, col. 3 lines 20-30, and esp. col. 7 lines 1-25). The specification for actual operation of the program is taught by the pass / fail result of the testing.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 44-49 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by McManis, US 5,692,047.

As for claim 44, McManis teaches a method including the following: at a certification authority, receiving an executable program generated by a party independent of the certification authority (fig. 1 items 102 & 104, col. 4 lines 65-67); at the certification authority, determining that no specification is available to the certification authority adequately describing the operations of the executable program (col. 5 lines 15-35, ANP Program Compiler only creates the digital signature for ANP program code meeting the criteria of lacking such a certificate), at the certification authority, testing the executable program and, based on the results of the testing, generating a specification describing the operation of the executable program (col. 5 lines 55-67); and at the certification authority, generating a digital certificate certifying that the executable program operates in the manner described in the specification (col. 2 lines 30-65, col. 3 lines 20-30).

As for claim 45, McManis teaches a method as in claim 44, further including: receiving the executable program at a user site (col. 6 lines 1-13); receiving the digital certificate at the user site; at the user site (col. 6 lines 1-13), evaluating the digital certificate to determine if the digital certificate is associated with the executable program, at the site (col. 6 lines 40-45), evaluating the digital certificate to determine whether to execute the executable program, and at the user site, executing the

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executable program, the execution being dependent on the evaluation of the digital certificate (col. 6 lines 60-67, col. 7 lines 15-24).

As for claim 46, McManis teaches a method as in claim 45, in which: the digital certificate specifies a security level, and the user site evaluation of the digital certificate to determine whether to execute the executable program includes comparing the security level to a required security level (col. 2 lines 55-57).

As for claim 47, McManis teaches a method as in claim 45, in which: the user site evaluation of the digital certificate to determine if the digital certificate is associated with the executable program includes comparing a hash value stored in the digital certificate to at least a portion of the executable program (col. 6 lines 54-67).

As for claim 48, McManis teaches a method as in claim 47, in which: the hash value comparison is preceded by the user site decrypting the hash value using a public key associated with the certification authority (col. 6 lines 54-67).

As for claim 49, McManis teaches a method as in claim 45, in which: the digital certificate includes the specification, and the step of evaluating the digital certificate to determine whether to execute the executable program includes evaluating the specification (col. 11 lines 1-10).

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As for claims 54-63, these claims are directed towards the apparatus carrying out the method of claims 44-49, and computer-program code that instructs the apparatus to carry out the method of claim 44. Therefore claims 54-63 are rejected on the same basis as are claims 44-49.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over McManis.

McManis fails to teach an executable program that is received at a user site in encrypted form. However Official Notice may be taken that such a step is old and well known in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated this feature into the system of McManis. It would have been desirable to do so since this would increase the security of the system against altered executable authentication data.

***Allowable Subject Matter***

8. Claims 50, 52, and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: The closest prior art in the field Mcmanis, fails to teach the features of a tamper-resistant execution space at a user site as per claims 50, 52, and 53.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul E. Callahan whose telephone number is (571) 272-3869. The examiner can normally be reached on M-F from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Emmanuel Moise, can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is: (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

4-15-06

*Paul Callahan*

*E. Moise*  
**EMMANUEL L. MOISE**  
**SUPERVISORY PATENT EXAMINER**